

REMARKS

Claims 1-8 remain in the application. In the Office Action, claims 1 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,086,215 to Di Paola in view of U.S. Patent No. 2,084,173 to Wexler. Claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Di Paola and Wexler as applied to claim 1, and further in view of Gershman (Velcro Digest). Claims 4-8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Di Paola and Wexler as applied to claim 1, and further in view of U.S. Patent No. 4,608,715 to Miller et al. The Applicant respectfully traverses these rejections for the following reasons.

Rejection of Claims 1 and 3 Under 35 U.S.C. 103(a)

In the Office Action, claims 1 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,086,215 to Di Paola in view of U.S. Patent No. 2,084,173 to Wexler.

More particularly, the Examiner took the position that Di Paola discloses a garment having an upper panel (identifier 17 in Figure 1), a lower panel (identifier 13 in Figure 1), an air permeable vent panel (39, 40 in Figure 1) joined with a lower edge of the upper panel and an upper edge of the lower panel, and an underlay panel 23 underlying and spanning the vent panel. The underlay panel includes a slit having a selectively operable closure (identifier 45 in Figure 3) assembly extending therealong. Issue is taken with that position.

In the application, claim 1 is an independent claim, and claims 2-8 depend from claim 1. In the subject invention, the air permeable vent panel is placed at outer surface of the garment (as shown in FIG. 1 in the subject application) and an air impervious underlay panel, which underlies the air permeable vent panel and includes an operable closure assembly to control ventilation, so that the outer surface of the garment is unitary, without opening or zipper. The advantage of the garment with a unitary outer surface constructed according to the present invention is that a user can paint or attach logos anywhere on the outer surface of the garment. In contrast, the garment disclosed in Di Paola patent includes a perforated sheet placed on the inner surface of the garment, and the outer surface of the garment includes a zipper and flaps to control ventilation, which make the outer surface of the garment non-unitary. Therefore, claim 1 is not anticipated by or obvious over the Di Paola patent.

Wexler discloses an apparel having ventilating means. Wexler also does not teach or suggest a garment having an air permeable vent panel disposed at the outer surface of the garment and an air impervious underlay panel underlying and spanning the vent panel for controlling ventilation. Therefore, the combination of Di Paola and Wexler cannot render the present invention as claimed in claim 1 obvious. The Applicant respectfully submits that the present invention is patentable over Di Paola in view of Wexler.

Claim 3 depends from claim 1 and includes all the limitations of claim 1. Therefore, claim 3 should be patentable over Di Paola in view of Wexler.

II. Rejection of Claim 2 Under 35 U.S.C. 103(a)

Claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Di Paola and Wexler as applied to claim 1, and further in view of Gershman (Velcro Digest).

Claim 2 depends from claim 1. As stated above, claim 1 should be patentable over Di Paola in view of Wexler. The Velcro Digest cited by the Examiner does not teach or suggest the limitations in claim 1. Therefore, claim 1 and the dependent claim 2 should be patentable over Di Paola in view of Wexler, and further in view of Gershman (Velcro Digest). The Applicant respectfully submits that the rejection to claim 2 should be reconsidered and withdrawn.

III. Rejection of Claims 4-8 Under 35 U.S.C. 103(a)

Claims 4-8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Di Paola and Wexler as applied to claim 1, and further in view of U.S. Patent No. 4,608,715 to Miller et al.

Claims 4-8 depend from claim 3, which depends from claim 1. As stated above, claims 1 and 3 should be patentable over Di Paola in view of Wexler. As seen from the figures in Miller et al., the garment disclosed in Miller et al. has the vent panel placed inside the garment and zippers placed at the outer surface of the garment. The zipper tracks and the zipper heads make the outer surface of the garment disclosed in Miller et al. non-unitary. Therefore, Miller et al. also does not teach or suggest the limitations as claimed in claim 1. Claims 4-8, which depend from claim 1, present further limitations to claim 1. Therefore, claims 4-8 should be patentable over Di Paola and Wexler, and further in view of Miller et al. The Applicant respectfully submits that the rejections to claims 4-8 should be reconsidered and withdrawn.

Serial No.: 10/654,364
Examiner: Alissa L Hoey
Reply to Office Action of May 19, 2004

Conclusion

The Applicant, accordingly, respectfully submits that in view of the preceding arguments, claims 1-8 are patentable over the cited references, whether considered alone or in combination, and respectfully requests reconsideration and withdrawal of the rejections to these claims under 35 U.S.C. 103(a). If a telephone conference will expedite prosecution of the application, the Examiner is invited to telephone the undersigned.

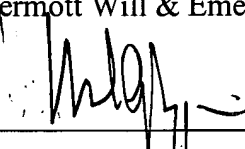
No additional costs are believed to be due in connection with the filing of this paper. However, the Commissioner is hereby authorized to charge any additional fees, or credit any overpayment, to our Deposit Account No. 50-1133.

Respectfully submitted,

McDermott Will & Emery LLP

Date: _____

8/16/04



Mark G. Lappin, P.C., Reg. No. 26,618
Attorneys for Applicants
28 State Street
Boston, MA 02109-1775
Telephone: (617) 535-4043
Facsimile: (617) 535-3800